

STATEMENT OF EMERGENCY
922 KAR 2:180E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2 and 3 to ensure implementation and enforcement of 2017 Ky Acts ch. 135 and the Child Care and Development Fund Block Grant (CCDF) as reauthorized by Public Law 114-183. In addition, the emergency administrative regulation supports more comprehensive background checks of child care staff members, improved access to emergency medications for children in care, and reflects assessment of child care provider standards in accordance with the Red Tape Reduction effort, enhancing provider operations and better protecting the health, safety, and welfare of children in child care settings in accordance with KRS 13A.190(1)(a)1. An ordinary administrative regulation would not allow the agency sufficient time to effect background checks to comply with state and federal mandates, preserve federal award, and better protect children's health, safety, and welfare in child care settings. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
SCOTT W. BRINKMAN, Acting Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Emergency Amendment)

922 KAR 2:180E. Requirements for registered child care providers in the Child Care Assistance Program.

RELATES TO: KRS~~[17.165, 17.500-17.580,]~~ 189.125, 199.011~~(3)~~~~[(2)]~~, (4), 199.894(1), 199.896(16), (18), 199.898, 199.8982, 199.8994, 214.010, 314.011(5),~~[KRS]~~ 527.070(1), 620.020(8), 620.030, 45 C.F.R. 98,~~[601-619, 9858,]~~ 20 U.S.C. 6081-6084, 42 U.S.C. 601-619, 9857-9858g

EFFECTIVE: February 14, 2018

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8994(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8994(6) requires the cabinet to promulgate administrative regulations to establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child care provider that receives a child care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care. This administrative regulation establishes requirements for providers to participate in the Child Care Assistance Program and the application procedures.

Section 1. Definitions. (1)~~["Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.~~

~~(2)]~~ "Cabinet" is defined by KRS 199.011~~(3)~~ and 199.894(1)~~[(2)]~~.

~~(2)~~~~[(3)]~~ "Child" is defined by KRS 199.011(4).

~~(3)~~~~(4)~~ "Closed" means the provider is no longer a registered program provider.

~~(4)~~~~(5)~~ "Conditional Approval" means time-limited approval while completing required training.

~~(5)~~~~(6)~~ "Corporal physical discipline" is defined by KRS 199.896(18).

~~(6)~~~~(7)~~ "Denied" means the application for program registration is not approved and the applicant will be penalized.

~~(7)~~~~(8)~~ "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

~~(8)~~~~(9)~~ "Health professional" means a person actively licensed in Kentucky as a:

(a) Physician;

(b) Physician~~Physician's~~ assistant;

(c) Advanced practice registered nurse~~practitioner~~; or

(d) Registered nurse as defined by~~in~~ KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

~~(9)~~~~(10)~~ "Related" means having one ~~(1)~~ of the following relationships with the registered provider:

~~(a) Child;~~

~~(b) Grandchild;~~

~~(c) Niece;~~

~~(d) Nephew;~~

~~(e) Sibling;~~

~~(f) Step-child;~~

~~(g) Child in legal custody of the provider; or~~

~~(h) Child living with the provider acting in loco parentis.~~

~~(11)~~ "Parent" is defined by 45 C.F.R. 98.2.

~~(10)~~~~(12)~~ "Pediatric abusive head trauma" is defined by~~in~~ KRS 620.020(8).

~~(11)~~ "Related" means having one ~~(1)~~ of the following relationships with the registered provider:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Step-child;

(g) Child in legal custody of the provider; or

(h) Child living with the provider acting in loco parentis.

~~(12)~~~~(13)~~ "Revoked" means the provider is no longer a registered provider and the provider will be penalized.

~~(13)~~~~(14)~~ "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

~~(15)~~ "Withdrawn" means the application for program registration is removed from consideration without a penalty.

Section 2. Application Rights and Requirements for Child Care Provider Registration. (1) An individual shall notify the cabinet or its designee of the individual's intent to apply for child care provider registration:

(a) Directly by:

1. Telephone; or

2. Written statement; or

(b) Indirectly by being designated as the choice for providing unregulated child care by an applicant for benefits under the Child Care Assistance Program (CCAP) in accordance with 922 KAR 2:160.

(2) An individual may apply or reapply for child care provider registration on the same day that the notice of intent to apply in accordance with subsection (1) of this section is made with the cabinet or its designee.

(3) An individual who intends and requests to apply for registration as a child care provider shall not be required to appear in person to complete an application and supporting documentation in accordance with subsections (4) and (5) of this section, but may receive all necessary forms and instructions by mail.

(4) To apply for child care provider registration in CCAP, an individual shall, within thirty (30) calendar days of giving notice of intent to apply pursuant to subsection (1) of this section:

(a) Submit:

1.a. A completed DCC-95, Application for Registered Child Care Provider in Provider's Home; or

b. A completed DCC-96, Application for Registered Child Care Provider in Child's Home;

2. Written verification from a health professional that the individual is:

a. Free of active tuberculosis; and

b. In good general health and able to care for children;

3. A completed DCC-94A, Registered Child Care Provider Information Form;

4. A completed IRS W-9, Request for Taxpayer Identification Number and Certification; and

5. A written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care that includes:

a. A designated relocation site;

b. Evacuation routes;

c. Measures for notifying parents of the relocation site and ensuring a child's return to the child's parent; and

d. Actions to address the needs of an individual child to include a child with a special need.

The cabinet shall post an online template of an evacuation plan that fulfills requirements of this administrative regulation for an individual's free and optional use;

(b) Show proof by photo identification or birth certificate that the individual is eighteen (18) years or older;

(c) Show verification of Social Security number; and

(d) Submit to background checks in accordance with 922 KAR 2:280~~[Meet the requirements of KRS 17.165(5), as shown by providing:~~

~~1. A criminal records check conducted by the Kentucky State Police or the Administrative Office of the Courts within the previous twelve (12) months on the individual;~~

~~2. A child abuse and neglect check using the central registry in accordance with 922 KAR 1:470 on the individual;~~

~~3. A criminal records check for any previous state of residence completed once if:~~

~~a. The applicant resided outside the state of Kentucky in the last five (5) years; and~~

~~b. No criminal records check has been completed for the applicant's previous state of residence; and~~

~~4. An address check of the Sex Offender Registry].~~

(5)(a) An applicant may receive conditional approval in accordance with Section 4(2) of this administrative regulation.

(b) Within ninety (90) calendar days of giving notice of intent to apply for registration as a child care provider in CCAP pursuant to subsection (1) of this section, the applicant shall pro-

vide verification that the applicant has obtained six (6) hours of training approved by the cabinet or its designee, in the areas of:

1. Health, safety, and sanitation;
2. Recognition of child abuse and neglect, which may include cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.896(16); and
3. Developmentally appropriate child care practice.

(c) An applicant who fails to complete training in accordance with paragraph (b) of this subsection shall be subject to cabinet action in accordance with Section 4(4) of this administrative regulation.

Section 3. Additional Requirements for Registered Providers in Provider's Home. (1) If a registered child care provider provides child care services in the provider's home, ~~the~~ the provider shall:

~~(a)[4-] Submit written verification from a health professional that each member of the provider's household age eighteen (18) or older is free from tuberculosis; [and]~~

~~(b)[2-] Provide written verification that each member of the provider's household who is age eighteen (18) or older has submitted to background checks in accordance with 922 KAR 2:280; and~~

~~(c) Complete and sign the DCC-107A, Registered Provider Home Safety Checklist, with a cabinet representative[meets the requirements in KRS 17.165 by the member's provision of the following to the cabinet or its designee:~~

~~a. Criminal records check conducted by the Kentucky State Police or the Administrative Office of the Courts;~~

~~b. Criminal records check for any previous state of residence completed once if:~~

~~(i) The household member resided outside the state of Kentucky in the last five (5) years; and~~

~~(ii) No criminal records check has been completed for the household member's previous state of residence; and~~

~~c. Child abuse and neglect check using the central registry in accordance with 922 KAR 4:470.~~

~~(b) An address check of the Sex Offender Registry and supporting documentation shall confirm that no individual residing in the provider's household is a registered sex offender].~~

(2) A registered child care provider shall certify that the provider's home and each play area used for child care are safe and have adequate:

- (a) Heat;
- (b) Light; and
- (c) Ventilation.

(3) Each floor of a registered child care provider's home used for child care shall have at least one (1):

- (a) Unblocked exit to the outside;
- (b) Smoke detector;
- (c) Fire extinguisher; and
- (d) Carbon monoxide detector if the home:
 1. Uses fuel burning appliances; or
 2. Has an attached garage.

(4) A registered child care provider's home and areas accessible to children in care shall be free of hazards, and the following items shall be inaccessible to a child in care:

- (a) Cleaning supplies, poisons, paints, and insecticides;
- (b) Knives, scissors, and other sharp objects;

- (c) Power tools, lawn mowers, hand tools, nails, and other like equipment;
 - (d) Matches, cigarettes, vaping devices, lighters, combustibles, and flammable liquids;
 - (e) Alcoholic beverages; and
 - (f) Medications.
- (5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored and locked in locations separate from each other and inaccessible to a child in care.
- (6) Electrical outlets not in use shall be covered.
- (7) An electric fan, floor furnace, freestanding heater, wood burning stove, or fireplace, shall:
- (a) Be out of the reach of a child; or
 - (b) Have a safety guard to protect a child from injury.
- (8) A registered child care provider shall use protective gates to block all stairways if a child in care is under age three (3).
- (9) Stairs and steps shall:
- (a) Be in good repair; and
 - (b) Include railing of comparable length to the stairs or steps.
- (10) A registered child care provider's home shall have:
- (a) At least one (1) working telephone with a residential line or an active mobile service; and
 - (b) An accessible list of emergency telephone numbers, including the numbers for the:
 - 1. Police;
 - 2. Fire station;
 - 3. Emergency medical care;
 - 4. Poison control center; and
 - 5. Reporting of child abuse and neglect.
- (11) A registered child care provider's home shall have a:
- (a) Refrigerator in working order that maintains a temperature of forty-five (45) degrees Fahrenheit or below; and
 - (b) Freezer that maintains a temperature of zero degrees Fahrenheit.
- (12) A registered child care provider shall maintain first aid supplies that include:
- (a) Liquid soap;
 - (b) Band aids;
 - (c) Sterile gauze; and
 - (d) Adhesive tape.
- (13) A registered child care provider shall wash hands with liquid soap and running water:
- (a) Before and after diapering a child;
 - (b) Before and after food preparation;
 - (c) Before feeding a child;~~[and]~~
 - (d) After smoking or vaping; and
 - (e) At other times when necessary to prevent the spread of disease.
- (14) In accordance with KRS 199.896(18), a registered child care provider shall not use corporal physical discipline on a child entrusted to the provider's care.
- (15) Pets or livestock shall be vaccinated and not left alone with a child.
- (16) If transportation is provided by a registered child care provider, the provider shall:
- (a) Have written permission from a parent or guardian to transport the child;
 - (b) Have a vehicle equipped with seat belts; and
 - (c) Comply with KRS 189.125 regarding child restraint and seating.
- (17)(a) If a registered provider provides child care in the provider's home, the cabinet or its designee shall complete an initial or an annual home inspection of the registered child care provider in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and this administrative regulation.
- (b) If the cabinet or its designee finds the registered provider is noncompliant with Section

2(4), 5, 6, or 7(2) or this section, the registered provider shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days from the cabinet's statement of noncompliance.

(c) A corrective action plan shall include:

1. Specific action undertaken to correct a violation;
2. The date action was or shall be completed;
3. Action utilized to assure ongoing compliance;
4. Supplemental documentation requested as a part of the plan; and
5. Signature of the provider and the date of signature.

(d) The cabinet or its designee shall review the plan and notify a registered provider within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:

1. Accept the plan;
2. Not accept the plan; or
3. Take negative action in accordance with Section 8 of this administrative regulation.

(e) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(f) A registered provider notified of an unaccepted plan shall:

1. Submit an amended plan within ten (10) calendar days of notification; or
2. Be subject to negative action in accordance with Section 8 of this administrative regulation.

(g) If a registered provider fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall take negative action in accordance with Section 8 of this administrative regulation.

(h) The cabinet shall not review or accept more than three (3) corrective action plans from a registered provider in response to the same written statement of deficiency.

(18) A registered provider's voluntary closure shall not preclude the cabinet's pursuit of negative action.

Section 4. Actions on Applications. (1) The cabinet or its designee shall approve, deny, or withdraw an individual's application for registration within thirty (30) calendar days from receipt of the individual's notice of intent to apply made in accordance with Section 2(1) of this administrative regulation.

(2) The cabinet or its designee may conditionally approve an individual who made a notice and application pursuant to Section 2(1) and (4) of this administrative regulation, to provide child care services to a child for ninety (90) calendar days, if the applicant meets the requirements of:

(a) Sections 2(4), 5, and 6 of this administrative regulation;~~and~~

(b) Section 3 of this administrative regulation, if child care is given in the home of the provider; and

(c) 922 KAR 2:280.

(3) The cabinet or its designee shall approve an individual who made a notice and application pursuant to Section 2(1) and (4) of this administrative regulation as a registered child care provider for one (1) year, if the applicant meets the requirements specified in:

(a) Sections 2(4) through (5), 5, and 6 of this administrative regulation;~~and~~

(b) Section 3 of this administrative regulation if child care is given in the home of the provider; and

(c) 922 KAR 2:280 for:

1. The applicant; and
2. Any member of the applicant's household who is age eighteen (18) or older if child care is given in the home of the provider.

(4) If a conditionally approved provider, as specified in subsection (2) of this section, has not completed the training requirement~~[within the ninety (90) day timeframe]~~ pursuant to Section 2(5) of this administrative regulation, or if a background check has not been completed in accordance with 922 KAR 2:280, the cabinet or its designee shall:

(a) Not approve an applicant for payment pursuant to 922 KAR 2:160 past the ninety (90) days of conditional approval; and

(b) Deny another:

1. Period of conditional approval for the same applicant; or

2. Application from the same applicant unless:

a. Training has been completed in accordance with Section 2(5) of this administrative regulation; and

b. Background checks have been completed in accordance with 922 KAR 2:280.

(5) The cabinet may confirm training verification provided by an applicant, conditionally approved applicant, or registered child care provider through the cabinet-approved training database maintained in accordance with 922 KAR 2:240.

Section 5. General Requirements for Registered Child Care Providers. (1) A registered child care provider shall not:

(a) Live in the same residence as the child in care;

(b) Hold a license to provide child care in accordance with 922 KAR 2:090;

(c) Hold certification to provide child care in accordance with 922 KAR 2:100; or

(d) Provide care for more than three (3) children unrelated to the provider in accordance with KRS 199.8982(1)(a).

(2) A registered child care provider shall not provide other home based services, including services, such as:

(a) A personal care home in accordance with 902 KAR 20:036;

(b) A family care home in accordance with 902 KAR 20:041;

(c) An adult day care in accordance with 910 KAR 1:160; or

(d) Supports for community living in accordance with 907 KAR 1:145 or 907 KAR 12:010.

(3) A registered child care provider shall:

(a) Comply with the:

1. Provisions of KRS 199.898; and

2. Provider requirements in accordance with 922 KAR 2:160, Section 13;

(b) Allow the cabinet, the cabinet's designee, another agency with regulatory authority, and a parent of a child in care access to the premises where a child receives care during the hours that the child care services are provided; and

(c) Report within ten (10) calendar days any change to the provider's:

1. Address;

2. Name;

3. Telephone number;

4. Household members; or

5. Location where the child care is provided.

(4)(a) A registered child care provider who gives care in the provider's home shall comply with the requirements of Section 3(1) of this administrative regulation within thirty (30)~~ten (10)~~ calendar days for a:

1. ~~(a)~~ New household member who is eighteen (18) years or older; or

2. ~~(b)~~ Household member who turns age eighteen (18).

(b) If a background check in accordance with Section 3(1) and 922 KAR 2:280 is pending on a member of the registered provider's household who is eighteen (18) years or older, the regis-

tered child care provider who gives care in the provider's home shall prohibit unsupervised contact between the household member and a child in care.

(5)(a) A registered child care provider shall maintain an attendance sheet in which the daily arrival and departure times of each child are recorded in accordance with 922 KAR 2:160, Section 13.

(b) A registered child care provider shall retain attendance sheets completed in accordance with paragraph (a) of this subsection for five (5) years.

(6)(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

(7) While providing child care services, a registered provider and another person in the provider's home shall:

(a) Be free of the influence of alcohol or a controlled substance, except for use of a controlled substance as prescribed by a physician; and

(b) Prohibit smoking or vaping in the presence of a child in care.

(8) A registered child care provider shall report to the cabinet or designee:

(a) Within twenty-four (24) hours from the time of discovery:

1. A communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

2. An accident or injury to a child that requires medical care;

3. An incident that results in legal action by or against the registered child care provider that:

a. Affects:

(i) A child in care;

(ii) The registered child care provider; or

(iii) An adult residing in the registered child care provider's household if child care services are provided in the provider's home; or

b. Includes the provider's discontinuation or disqualification from a governmental assistance program due to fraud, ~~abuse,~~ or criminal conviction related to ~~that~~ program;

4. An incident involving a fire or other emergency, including a vehicular accident when the provider is transporting a child receiving child care services; ~~or~~

5. A report of child abuse or neglect that:

a. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

b. Names:

(i) The registered child care provider as the alleged perpetrator; or

(ii) A member of the registered child care provider's household as alleged perpetrator if child care services are provided in the provider's home; or

6.a. The registered child care provider is disqualified in accordance with 922 KAR 2:280; or

b. If child care is given in the provider's home, a member of the registered provider's household who is eighteen (18) years or older meets a disqualifying criterion or background check result in accordance with 922 KAR 2:280;

(b) An incident of child abuse or neglect pursuant to KRS 620.030;

(c) The death of a child in care within one (1) hour; or

(d) The provider's temporary or permanent closure as soon as practicable, which shall also be given to the parent of a child in care.

Section 6. Child Ratios. During hours of operation, a registered child care provider shall not care for more than:

(1) Three (3) children receiving CCAP per day;

- (2) Six (6) children receiving CCAP per day, if those children are:
 - (a) A part of a sibling group; and
 - (b) Related to the provider; or
- (3) A total of eight (8) children inclusive of the provider's own children.

Section 7. Renewal of Registration. (1) The cabinet or its designee shall send a reminder notice to a registered child care provider at least forty-five (45) calendar days prior to the expiration date of the provider's registration issued in accordance with Section 4(3) of this administrative regulation.

(2) To renew child care provider registration prior to the expiration of the registration, a registered child care provider shall:

- (a) Meet the requirements specified in:
 - 1. Sections 2(4), 5, and 6 of this administrative regulation; and
 - 2. 922 KAR 2:280;

(b) Complete, and provide verification of, three (3) hours of training in early care and education approved by the cabinet or its designee:

- 1. To include one and one-half (1 1/2) hours of pediatric abusive head trauma training:

- a. Within first year of employment or operation as a child care provider; and
 - b. Completed once during each subsequent five (5) years of employment or operation as a child care provider; and

- 2. In one (1) or more of the following subjects:

- a. Child growth and development;
 - b. Learning environments and nutrition;
 - c. Health, safety, and nutrition;
 - d. Family and community partnerships;
 - e. Child assessment;
 - f. Professional development and professionalism; or
 - g. Program management and evaluation;

(c) Submit an updated version of the evacuation plan described in Section 2(4)(a)5 of this administrative regulation;

(d) Retain a copy of the updated evacuation plan; and

(e) Provide a copy of the updated evacuation plan to each parent of a child in care.

(3) In addition to the requirements of subsection (2) of this section, a registered provider who gives care in the provider's home shall also meet the requirements of Section 3 of this administrative regulation.

Section 8. Negative Action for An Applicant or A Registered Child Care Provider. (1) If a registered child care provider or a member of the provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the ~~[family in need of services assessment or]~~ investigation; and

(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

(2) The cabinet or its designee shall send written notice of negative action to:

(a) An applicant for registration, if the application is:

- 1. Withdrawn; or
- 2. Denied; or

(b) A registered child care provider, if the provider's registration is:

- 1. Closed; or

2. Revoked.

(3) The notice of negative action shall include the:

- (a) Reason for the negative action; and
- (b) Effective date.

(4) An application for registration shall be denied or a registered provider's registration shall be revoked if:

(a) Written verification from a health professional confirms a diagnosis of tuberculosis;

(b) A disqualifying criterion or background check result in accordance with 922 KAR 2:280 is met~~[A background check pursuant to KRS 17.165(5) reveals a:~~

~~1. Substantiated incident of child abuse or neglect in accordance with 922 KAR 1:470; or~~

~~2. Conviction of, or an Alford or guilty plea to, a:~~

~~a. Violent crime; or~~

~~b. Sex crime];~~

(c) A history of behavior exists that may impact the safety or security of a child in care including:

1. A conviction, an Alford plea, or a guilty plea related to the abuse or neglect of an adult; or

~~2. [A conviction for, or an Alford or guilty plea to, a drug-related felony unless five (5) years have elapsed since the person was fully discharged from imprisonment, probation, or parole;~~

~~3. A confirmation through an address check and supporting documentation that a:~~

~~a. Provider is a registered sex offender; or~~

~~b. Member of the provider's household is a registered sex offender, if the provider provides child care services in the provider's home; or~~

~~4.] Other behavior or condition indicating inability to provide reliable care to a child;~~

(d) The provider uses or allows the use of any form of corporal physical discipline on a child entrusted to the provider's care;

(e) The cabinet has probable cause to believe there is an immediate threat to the health, safety, or welfare of a child;

(f) The applicant or provider has been discontinued or disqualified from participation in:

1. CCAP, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud, ~~[or]~~ abuse, or criminal conviction related to~~[or]~~ that program;

(g) The applicant or provider knowingly misrepresents or submits false information on a form required by the cabinet; or

(h) During the hours that child care services are provided, the provider refuses access by:

1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:

a. A child in care; or

b. The location of the child care; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records.

(5) If an applicant has had a previous ownership interest in a child-care provider which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or a pending adverse action in accordance with 922 KAR 2:090, 2:100, ~~[2:110,]~~ 2:120, or this administrative regulation, the cabinet shall grant the applicant registration if:

(a) A seven (7) year period has expired from the:

1. Date of the prior denial, suspension, or revocation;

2. Date the certification, license, registration, or permit was voluntarily relinquished as a result of an investigation or a pending adverse action;

3. Last day of legal remedies being exhausted; or
4. Date of the final order from an administrative hearing; and

(b) The applicant complies with:

1. Sections 2, 5, and 6 of this administrative regulation; ~~and~~
2. If care is given in the home of the provider, Section 3 of this administrative regulation; and
3. 922 KAR 2:280;

(c) The applicant completes, and provides verification of, an additional twelve (12) hours of training approved by the cabinet or its designee in early care and education;

(d) The applicant has not had an application, certificate, license, registration, or permit to operate as a child care provider denied, revoked, or voluntarily relinquished for:

1. A disqualifying criterion or background check result in accordance with 922 KAR 2:280~~[Conviction of, or an Alford or guilty plea to, a sex crime or violent crime in accordance with KRS 17.165]; or~~

2.~~[Abuse or neglect of a child according to a child abuse and neglect check of the central registry in accordance with 922 KAR 1:470;~~

3. ~~Placement on the Sex Offender Registry;~~

4. ~~Conviction of, or an Alford or guilty plea to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole; or~~

5.] Discontinuance or disqualification from participation in:

a. CCAP, including an intentional program violation in accordance with 922 KAR 2:020; or

b. Another governmental assistance program due to fraud, ~~or~~ abuse, or criminal conviction related to~~of~~ that program.

(6) An application may be withdrawn:

(a) If all required documentation for the application process is not received within thirty (30) calendar days in accordance with Section 2(4) of this administrative regulation; or

(b) At the request of the applicant.

(7) A registered child care provider's status may be closed:

(a) At the request of the provider; or

(b) If the provider fails to comply with requirements in Section 3, 5, 6, or 7(2) of this administrative regulation.

(8) The voluntary withdrawal, closure, or relinquishment of a provider's registration shall not preclude the cabinet's pursuit of adverse action.

Section 9. Appeal of Negative Action. If the cabinet or its designee denies or withdraws an application for registration, revokes a provider's registration, or closes a provider, the applicant or provider may request an appeal in accordance with 922 KAR 2:260~~[4:320]~~.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-94A Registered Child Care Provider Information Form", 2018~~[edition 7/12]~~;

(b) "DCC-95, Application for Registered Child Care Provider in Provider's Home", 2018~~[edition 7/12]~~;

(c) "DCC-96, Application for Registered Child Care Provider in Child's Home", 2018~~[edition 7/12]~~; ~~and~~

(d) "DCC-107A, Registered Provider Home Safety Checklist", 2018; and

(e) "IRS W-9, Request for Taxpayer Identification Number and Certification", December 2014~~[edition 10/07]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky

40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 14, 2018 at 10 a.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for child care providers, who are family, friends, or neighbors, to register and participate in the Child Care Assistance Program (CCAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for child care providers to register and participate in CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of requirements for a child care provider to register and participate in CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care provider to register and participate in CCAP.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates reference to the new administrative regulation governing comprehensive background checks for child care providers and onsite inspection requirements for a registered provider serving a child in the provider's home pursuant to the Child Care and Development Fund's federal reauthorization. The amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to foster provider integrity in CCAP and to ensure the cabinet is capable of appropriately responding to deficiently operating providers. The amendment also ensures the state's avoidance of federal penalty and registered providers' continued eligibility for CCAP funded through federal award.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes through its update and clarification of the requirements for a child-care provider to register and participate in CCAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of standards for registered child care providers to participate in CCAP.

(3) List the type and number of individuals, businesses, organizations, or state and local

governments affected by this administrative regulation: Applicant and existing registered child care providers will be impacted by this administrative regulation. As of December 14, 2017, there were 116 registered child-care providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Given the new federally mandated background check requirements and onsite inspection requirements for registered child care providers, the cabinet has attempted to avoid any further impact on regulated entities, but rather, has attempted to clarify provisions of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will entail no or minimal new costs to new applicants or existing registered providers. Registered providers serving children in their homes will be required to undergo an onsite inspection. While this results in some operating burden for the applicable registered providers, it is another assurance measure for the health, safety, and welfare of children in their care. In addition, it preserves federal funding of CCAP.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and registered child-care-providers and the children in their care will benefit from the improved health and safety measures afforded through this and other concurrently filed administrative regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort funds for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required as a result of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 20 U.S.C. 6081-6084, 42 U.S.C. 601-619, 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.8994(6)

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

(4) Will this administrative regulation impose stricter requirements, or additional or different

responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.8994(6), 45 C.F.R. 98, 20 U.S.C. 6081-6084, 42 U.S.C. 601-619, 9857-9858q

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will generate no revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will generate no revenue in the subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: